A.F.R



HIGH COURT OF CHHATTISGARH: BILASPUR

S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J

CIVIL REVISION NO.191 of 2006

**Petitioner**

M/s Maruti Clean Coal and Power Limited (Maruti) A company incorporated under the Companies Act, 1956, having its registered office at G-9 Hira Arcade, Pandri, Raipur (CG).

Defendant No.2

**Versus**

**Respondents**

1) South Eastern Coal Fields Limited (SECL), A Government Company incorporated under the Companies Act, 1956, having its registered office at Seepat Road, Bilaspur (CG)

Plaintiff

2) State Government of CG through Collector, Korba

Defendant No.1

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PRESENT:

Shri BP Sharma with Shri K Mehra, counsel for the petitioner.

Shri HB Agrawal, Senior Advocate with Shri OP Agrawal, and Shri AK Sinha, Counsel for respondent No.1.

Shri Prashant Mishra, Addl. Adv. General for respondent No.2/State.

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**ORDER**

**( Passed on 8th February 2007)**

This revision under Section 115 of the Code of Civil Procedure (for short "the CPC") has been directed against the order dated

07.12.2006 passed by the Civil Judge, Class II, Katghora in Civil Suit No.90-A of 2004 where by petitioner's application under Order VII Rule 11 of the CPC for rejection of the plaint has been dismissed.

2) State of Chhattisgarh executed a lease deed in favour of the petitioner and thereby leased out land measuring 37.91 acres bearing Khasra Nos 850/24, 850/27, 850/28, 850/30, 850/31 and 850/32 which is the land in dispute. Respondent No.1 claiming the land of his own on the ground that under the Coal Bearing Area (Acquisition and Development) Act, 1957 the land has been acquired by the Central Government for them and they are accordingly title holders thereof, filed a Civil Suit for declaration of title and permanent injunction.

3) Petitioner filed an application under Order VII Rule 11 of the CPC for rejection of the plaint on the following grounds :

1) The plaint disclosed no cause of action as the suit property being Khasra No.594, 611 and 616 in village Ratiza was neither in the possession nor had been allotted to the petitioner.

2) That the suit land had been valued arbitrarily, unreasonably and that on a proper valuation the Katghora Court is not jurisdiction to entertain the suit.

3) The suit was barred by law in accordance with the provision of the Specific Relief Act in absence of relief of possession.

4) Barred by principles of res judicata.

4) Learned lower Court considered counter pleadings and arguments advanced by both the parties, also considered averment, the map annexed therein and found that the land bearing Khasra

No.594, 611 and 616 acquired in favour of respondent No.1 having shown Khasra No.850 and accordingly hold presence of cause of action. Here, it is not out of place to mention that the land leased out to petitioner by respondent No.1 is claimed by respondent No.1 under Central Government notification. Admittedly, petitioner has taken possession over the suit land under the grant issued in his favour by the State. Therefore, so far as cause of action is concerned, learned trial Court did not err in deciding it in favour of respondent No.1.

5) So far as applicability of Order VII Rule 11 of the CPC with regard to valuation and payment of Court fee is concerned, the relevant provision reads as below :

> Order VII, Rule 11 (b) & (c)
>
> *"11. Rejection of plaint.- The plaint shall be rejected in the following cases:-*
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> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so:*
>
> *(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:"*

6) From bare reading of the above provision, it is manifest that to apply it, the Court has to determine whether the claim is under valued or written upon paper insufficiently stamped and thereafter

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direct the plaintiff to correct it and on being required by the Court to correct it, plaintiff fails to do so.

7) Order VII Rule 11 of the CPC does not empower a Court to apply the provision after deciding controversies in between the parties, but it applies on plaint averment, therefore, if from the pleading alone plaint falls within the category of Order VII Rule 11 (b) or (c) of the CPC, the question of non payment of Court fee or valuation becomes relevant. In view of pleading, relief for declaration and injunction appears to be correct and the trial Court correctly held that the present plaint does not fall within the four corners of Order VII Rule 11 (b) & (c) of the CPC.

8) Under Section 34 of the Specific Relief Act, 1963 (for short "the Act") if plaintiff is required to ask for relief of possession, who fails to seek such relief and merely prays for declaration, in that case equity demands that the Court, before dismissal of the suit, must afford reasonable opportunity to the plaintiff to claim the relief required in accordance with the proviso of Section 34 of the Act. Thereafter, if plaintiff fails to do so, the suit may be dismissed. At this preliminary juncture, absence of prayer for grant of relief of possession in view of the pleading does not bar the suit.

9) Petitioner's contention though opposed is that judgment rendered by Hon'ble the Apex Court in ***TN Godavarman Thirumulpad***

***Vs Union of India and others***[1]***,*** *creates* a bar under principle of *res judicata* for institution of the present suit. Following paragraphs of the above judgment being relevant, are quoted as below :

> "1: The question for consideration in these matters is whether the land measuring about 15 hectares leased by the State of Chhattisgarh to M/s Maruti Clean Coal and Power Limited (for short, "Maruti") for setting up of coal washery is a part of forest land or not. This question has been raised by one Deepak Agrawal by filing IA No.858 of 2003 claiming to be a public spirited person and journalist by profession and concerned about the adverse effect on the environment of the area as a result of the grant of lease of forest land for non-forest activities in violation of law. The applicant claims that undue favour and patronage has been extended to Maruti for establishment of coal washery plant in respect of land which is a forest land by wrongly showing in various records that the land is part of Village Nawagaon Khurd whereas actually the land forms part of Village Ratija.
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> 21: At this stage, we may note that some dispute as to the title of the land in question between the State Government and Maruti on one hand and M/s South East Collieries Limited (SECL) on the other is pending in a civil court. In these proceedings, we are not concerned about the title of the land that may have to be examined and decided by the civil court. All pleas, factual and legal, as permissible in law, would be open to the parties to be agitated before the civil court. The only question for our consideration in these proceedings is as to the nature of the land, namely it is forest land or not.
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> 39: Before concluding, it may also be noted that except Deepak Agrawal, other parties before us have not questioned the conclusions in the second and the third reports of CEC that the land in question is not a forest land. Besides, Maruti being the allottee, the State of Chhattisgarh, the

[1] (2006) 5 SCC 28

> Ministry of Environment and Forests, the Forest Survey of India and even SECL have not questioned the conclusion of CEC that the land in question is not a forest land.
>
> 40: In view of the aforesaid discussion, even on facts we find no substance in the plea that the land allotted to Maruti is forest land. Accordingly, we accept the recommendations of CEC as contained in the second and third reports. As already noted, the dispute in respect of the title is not a matter in issue before us. Thus, we have not examined this issue."

10) From conjoint reading of the aforesaid paragraphs as well after going through the report of CEC annexed along with the petition herein, it is clear that Hon'ble the Apex Court only decided that the land allotted to Maruti is not forest land. Hon'ble the Apex court in specific words has stated that the dispute in respect of title is not a matter in issue before them, therefore, they have not examined that. Clear enough to say that the judgment rendered by Hon'ble the Apex Court in the matter of ***Godavaraman*** (supra) does not create a bar on the principle of *res judicata* for adjudication of title in between the parties. So far as report of CEC is concerned, the finding recorded by it does not amount Court's finding.

11) In the result, the impugned order passed by the trial Court does not suffer from any illegality or irregularity, which may call for interference by this Court in its revisional jurisdiction, therefore, the revision being devoid of merit is dismissed.

12) Petitioner shall pay the cost to respondents No.1 & 2.

**Sd/-**
**V.K.Shrivastava**
**Judge**